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In re Application of :
Michael Kretzschmar : DECISION ON PETITION
Application No. 09/673,814 :
Filed: October 20, 2000 :
Attorney Docket No. H01.2I-9509-US01 :

This is a decision on the petition filed by facsimile transmission on September 4, 2003 by which petitioner requests withdrawal of the examiner's holding that this application stands abandoned for failure to file a proper and timely reply to the Office action dated April 4, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioner alleges that this application is not abandoned because a timely reply to the Office letter in question was in fact filed by facsimile transmission on August 4, 2003, and the reply was timely by reason of an authorization to charge any necessary fees to Deposit Account No. 22-0350 that was included with the reply. In support of this allegation, petitioner has furnished a copy of the reply and a copy of a filing receipt for the facsimile filing of the reply which shows that the reply was received in the Office on August 4, 2003, within the shortened statutory period for response set in the Office letter, as extended by reason of the constructive request for an extension of time (37 CFR 1.136(a) embodied by the authorization to charge fees. Office records did not show that the necessary extension fees and claim fees were charged as requested, but these records also do not show that the failure to charge the fees resulted from any deficiency in counsel's deposit account balance. It appears that the facsimile reply was simply lost in the Office. Therefore, this evidence clearly establishes that this application is not in fact abandoned. The requisite fees have now been charged against the above mentioned deposit account.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the examiner for action on the reply filed on August 4, 2003.

PETITION GRANTED.


E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

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